



TD Wealth
Private Client Group
300 Franklin Street, 2ND Floor
Manchester, NH 03101

October 14, 2024

The Right Reverend A. Robert Hirschfeld,
The Episcopal Church of New Hampshire
65 Green Street
Concord, NH 03301

Re: John Elywn Stone Trust

Dear Bishop Hirschfeld,

I am the Trust Officer at TD Bank, N.A. (the “Bank”) with respect to the oversight of an irrevocable trust (the “Trust”) established by John Elwyn Stone (“Stone”), under his Will dated April 21, 1971 (the “Will”), in which Stone names The First National Bank of Portsmouth, as Trustee of the Trust. The Bank has succeeded The First National Bank of Portsmouth, as Trustee of the Trust.

I am writing on behalf of the Bank in response to the request of the Episcopal Church of New Hampshire (the “Diocese”) to execute a Waiver of Right of Reverter (the “Waiver”) with respect to the intended development of land located at 1035 Lafayette Road, Portsmouth, New Hampshire (the “Property”), which Stone gifted by deed to The Parish of Christ Church, now Christ Episcopal Church (the “Church”) in 1964 pursuant to the terms of an agreement between Stone and the Church dated June 17, 1964 (the “1964 Agreement”).

The 1964 Agreement provides that the consideration for the gift is that the Church “has agreed to erect an Episcopal Church on the premises set forth above [i.e. the Property], as a successor to its Church destroyed by fire” The 1964 Agreement also creates the condition that “this property shall be used solely for ecclesiastical purposes and in the event of the use of the property for any other purposes, the title to the property shall revert to the Seller, his heirs, executors, administrators and assigns.” The 1964 Agreement was later modified in 1965 by Indenture Agreement between Stone and the Church dated December 29, 1965 and recorded on November 6, 1972 in the Rockingham County Registry of Deeds at Book 2183, Pages 54 and 55 (the “1965 Agreement”) to resolve an alleged breach of the 1964 Agreement by the Church. Under the terms of the 1965 Agreement, in the section thereof captioned “Subdivision B” the Church agreed that “no other buildings shall be constructed upon the aforesaid property nor ells nor extensions on existing structures unless authorization of Stone is obtained.” Another section of the 1965 Agreement, captioned “Clause 5” provides that Stone shall have the right, either by will or by instrument duly acknowledged, to appoint a person who shall succeed to and have all of the rights with respect to subdivisions A and B above which Stone would have had if living, including the right to enforce reversion to Stone’s estate of the realty for condition broken.”

One month after executing his Will, Stone executed a Codicil thereto dated May 22, 1971 (the “1971 Codicil”) which incorporates the 1964 Agreement and the 1965 Agreement by reference and expressly appointed The First National Bank of Portsmouth, Portsmouth, New Hampshire,

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or its successor trustee to enforce the right of reverter contained in the 1964 and 1965 Agreements. The 1971 Codicil further provides that “if the condition is broken and right of reverter does exist and the parties named hereunder do not take action to exercise this right of reverter, I direct that the Probate Court for Rockingham County appoint a responsible party or person execute this right of reverter, in accordance with the intentions specified and purpose specified and directed in my Will of a tree farm, bird sanctuary or wild life preservation.”

The Bank understands that the Church proposes to ground lease the Property to the Portsmouth Housing Authority or its affiliate for the purpose of redeveloping the Property (the “Project”). The Project consists of the construction of a 4-story, 44-unit multi-family residential building as workforce housing to the south of the existing church building; the conversion of the first floor of the existing church building into office space; the construction of an addition to the existing church building to create seven units of transitional housing to the north of the new office; and the renovation of the lower lever of the existing church building to expand the existing daycare facility, with the church itself relocated to the existing rectory building on the Property. After reviewing the 1964 Agreement, the 1965 Agreement, Stone’s Will and the 1971 Codicil, the Bank has determined that the Project is not consistent with Stone’s donative intent (insofar as it contemplates the construction of new buildings and uses of the Property for other than ecclesiastical purposes) and the Bank does not have the authority under these documents to execute the Waiver. Moreover, the Church’s break of the condition of Stone’s gift would obligate the Bank to exercise the right of reverter, in which case, the Bank’s failure to do so triggers the requirement that the Probate Court appoint another person to execute the right of reverter.

We note that the Diocese and the Church have not submitted a formal written request for the Bank’s consent to the Project. Had such a request been made, however, the Bank would nevertheless withhold its consent for the reasons set forth above.

Very truly yours,

Leah D. MacDall, Trust Officer II

cc: Benje Ambrogi, Chief Financial Officer, The Episcopal Church of New Hampshire
Laura B. Dodge, Esq., McLane Law Firm
Craig W. Welch, Executive Director, PHA Housing Development LTD
Kara N. Sweeney, Esq., PretiFlaherty
Patrick D. Hackley, Director/State Forester, Division of Forests and Lands
New Hampshire Department of Natural & Cultural Resources
Jessica King, Esq., Department of Justice
Mary Ann Dempsey, Esq., Director of Charitable Trusts Unit
Timothy E. Britain, Esq., Cleveland, Waters and Bass, P.A.
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